IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO.:	5:09-CV-451-H(2)	
DOUGLAS E. MCPHAIL,)	
)	
Plaintiff,)	
)	
)	
v .)	
)	ORDER
)	
AMERICAN GENERAL FINANCIAL)	
SERVICES and A GOODNIGHT)	
SLEEPSTORE,)	
)	

Defendants.

This matter is before the court, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, on plaintiff's motion for leave to dismiss his claims against defendant A Goodnight Sleepstore ("GS") [DE #35]. On May 10, 2010, GS moved to dismiss plaintiff's claims pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted. Subsequent to the filing of GS' motion to dismiss, plaintiff filed the motion presently before the court, in which plaintiff requests leave of court to dismiss his claims against GS because further investigation has revealed "that there is no legal ground to continue to pursue the action against defendant [GS]." (Aff. Supp. Mot. Dismissal ¶ 4.) Defendant GS has responded and argues that dismissal

should be entered with prejudice because plaintiff has admitted that his claims against GS are baseless and "there is no allegation, evidence [or] forecast of evidence . . . that there is a realistic possibility that new evidence may be discovered that could support Plaintiff's claims against GS." (Resp. to Plf.'s Mot. Dismissal at 2-3.) Plaintiff has not replied, and the time for further filings has expired.

For good cause shown, plaintiff's motion [DE #35] is GRANTED, and plaintiff's claims against defendant GS are DISMISSED WITH PREJUDICE. GS' motion to dismiss [DE #29] is DISMISSED as moot.

This 30 day of June 2010.

MALCOLM J. HOWARD

Senior United States District Judge

At Greenville, NC #31